IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 1537 (SS) of 2005

Ram Pal Singh,
S/o Mkkhan Singh,
R/o Meghawala, Jaspur,
District – Udham Singh Nagar. **.....Petitioner.**

Versus

1. State of Uttarakhand through Revenue Department, Dehradun.

2. Commissioner, Kumaon Region, Nainital.

3. District Magistrate, District-Udham Singh Nagar.

.....Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri Ramesh Tamta, learned Counsel for the petitioner and Sri H.M. Raturi, learned Standing Counsel for State of Uttarakhand on behalf of respondents.

By means of this writ petition,the petitioner has prayed for the following relief:

a. *Issue a writ, order or direction in the nature of Mandamus, directing the respondents to give petitioner the seniority and promotion at par the persons appointed with him/ his batch mates, others resultant/ consequent benefits accruing from time to time, giving him the seniority / promotion from the date of his initial appointment as Collection Amin.*

b. *Issue any other and further order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.*

c. *Allow this writ petition and award the cost of it in favour of the petitioner.*

Brief facts as narrated in the writ petition are that the petitioner was initially appointed as Collection Amin. Later on, he was appointed as Untrained Patwari. From perusal of Annexure no. 3, which is letter of District Magistrate, Udham Singh Nagar, it reveals that petitioner was appointed as Untrained Patwari on 09.04.1980 and was sent for training, which commence from 01.11.1983 and he successfully completed the training.

The submission of the learned counsel for the petitioner is that one Sri Dhani Ram, who was appointed as Untrained Lekhpal, after the appointment of the petitioner and has completed the training along with petitioner, has already been provided promotion ignoring the claim of the petitioner.

The fact that Sri Dhani Ram was appointed after the appointment of petitioner, is also apparent from perusal of letter dated 22.07.2000 written by District Magistrate, Udam Singh Nagra, which shows that Sri Dhani Ram was appointed as Uttaranchal Patwari on 29.04.1980 much after the appointment of petitioner.

Respondents have filed counter affidavit. In para 5 of the counter affidavit, respondents have submitted that according to Lekhpal Regulation Act, 1958, it is clearly mentioned that for the post of Patwari/ Lekhpal their seniority will be considered by the performance in the Training Text and upon the marks obtained by the candidate and for instance, if any, candidate obtained equal marks, then their seniority will be decided according to their age. In para 6 of the counter affidavit,

respondents have submitted that the promotion of Dhani Ram done in accordance with Lekhpal Regulation Act, 1958 and moreover, he being the Scheduled Cast candidate his promotion was considered under the Scheduled Caste Reservation Quota.

I have gone through The U.P. Lekhpals Service Rules of 1958. Rule 17 (2) of the aforesaid Rules provides provision of seniority, which is reproduced hereunder:

"Seniority of Lekhpals shall be determined from the substantive appointment provided that if two or more candidates are appointed on the same date, the seniority shall be determined from the date of their passing Patwari or Lekhpals school Examination. If the year of passing the examination is same, the seniority shall be determined on the basis of aggregate marks obtained at the examination. If the aggregate marks are also equal, the seniority shall be determined on the basis of age."

From the perusal of aforesaid Rule, interpretation of respondents for considering the seniority of Lekhpal as stated in the counter affidavit does not seem to be correct. In the counter affidavit it is stated that seniority will be considered by the performance in the training test and by the marks obtained by the candidates.

This situation will comes only where two or more candidates are appointed on the same date. From perusal of Annexure no. 3 which is document of respondents, it is clear that Sri Dhani Ram entered into service on 29.04.1980 whereas petitioner entered into service on 09.04.1980 whereas petitioner entered into service on 09.04.1980. Accordingly, the interpretation of respondents, regarding the seniority of Lekhpal / Patwari is not correct. It is further stated in the

counter affidavit that Sri Dhani Ram being the Scheduled Caste has been provided promotion under Scheduled Caste Quota.

Learned counsel for the petitioner has submitted that petitioner belongs to OBC Category and under this category also promotions have been made by the respondents.

In these circumstances, I deem it fit and proper to direct the petitioner to make representation before Collector, Udham Singh Nagar within a period of three week and Authority concerned is directed to take decision on the representation of the petitioner, considering the facts mentioned in the body of the judgment within a period of six weeks from the date of receipt of representation along with certified copy of this order and in case, petitioner is eligible to be promoted on the post of Revenue Inspector and any junior to the petitioner, in the OBC category, has already been promoted on the post of Revenue Inspector, the case of the petitioner shall also be considered for promotion on the post of Revenue Inspector.

With this direction, writ petition as well as all the pending applications are finally disposed of. No order as to costs.

(M. M. Ghildiyal, J)

September 22, 2007
SKS